THE UNIVERSITY
OF ILLINOIS
LIBRARY

332
B875
v.9

A

DEFENCE

OF

JOINT STOCK COMPANIES;

BEING

AN ATTEMPT TO SHEW THEIR LEGALITY, EXPEDIENCY, AND PUBLIC BENEFIT.

BY HENRY DAY.

LONDON:

PRINTED FOR LONGMAN, HURST, REES, AND ORME, PATER-NOSTER ROW; AND RICHARDSON, ROYAL EXCHANGE.

1808.

Price 2s. 6d.

W. Pople, Printer,
22, Old Boswell Court, Strand.

TO THE GENTLEMEN,

DIRECTORS OF THE

BRITISH ALE BREWERY

GENTLEMEN,

THE opportunities I have had of observing the beneficial effects resulting to individuals and to the public from the Institution to which you have done me the honor of appointing me Solicitor, have naturally led me to a more particular investigation of the principles on which that Institution is founded, and have induced a complete conviction of their general utility and importance, both to the government and to society.

Sincere, however, as this conviction is, it will I fear be very inadequately expressed

in the following pages; and I must confess, that I feel no small degree of alarm in appealing to the tribunal of public judgment; certainly not from any defect in the cause, but from the weakness of the advocate. One consideration, however, supports me in my anxiety, and will even console me in disappointment: and I shall not, whatever be the result, entirely repent of a temerity, which, though it may have shewn that my zeal exceeds my judgment, has at least afforded me the high and sincere gratification of expressing to you, Gentlemen, (for myself and Mr. Hamerton) a grateful sense of that kindness and indulgence with which, both collectively and individually, you have always favored us, and of the very high esteem with which I have the honor to be,

Gentlemen,
Your most obedient and much obliged
humble servant,
HENRY DAY.

t Cullum Street, Fenchurch Street.

A

DEFENCE

OF

JOINT STOCK COMPANIES.

THE numerous attempts which have been made to disparage Joint Sock Companies, in the estimation of the public, and which have been followed up by a motion in the Court of King's Bench, from the first law-officer of the crown, (grounded upon an obsolete statute, which, if ever acted upon, was at least never directed against institutions similar to those which constitute the subject of the present investigation;) must, necessarily, have a tendency to alarm those numerous and respectable individuals who have so large a share of property at stake, and to excite the curiosity of the public at large, whose comfort and

accommodation are the avowed objects of their association.

When it is considered that property to the vast amount of nearly *one hundred and fifty millions* is involved in this contest, and that, if the doctrine insisted upon as the true construction of the 6th of George I. be correct, (to say nothing of rendering some of the first noblemen and commoners of the realm subject to indictments,) not only the breweries and the distilleries, than which perhaps no other associations are more advantageous to the public and beneficial to the revenue, will be sacrificed to avarice and monopoly; but all the manufacturing and other companies, which are organized merely by a deed of trust, although they have been permitted by the legislature to grow to most productive maturity, will be swept away in the general wreck.

When so much radical wealth, for such it may truly be termed, is at stake; it never can be supposed that the present Chancellor of the Exchequer, who in his official capacity must have experienced the aid which some of these companies, particularly the breweries, afford to the revenue, and whose liberal principles of political economy are similar to those of the great-

est statesmen that perhaps this or any other country could ever boast, will lend his assistance to destroy these companies, for no other reason than because their advantage to the public has been so conspicuously acknowledged, that monopoly trembles for its existence.

When therefore the attorney general has moved for an information upon an obsolete and solitary act of parliament, made in very different times, and with very different views, against companies so distinctly and diametrically opposite to those "mischievous projects and undertakings" which were then the objects of legislative suppression; and when in consequence of the interference of such high authority, all those companies which have no stronger bond of union than simply a deed of trust, are necessarily paralyzed and placed in a state of anxious suspense, not only for their property but their persons (this act inflicting criminal punishments,) until the court shall declare their construction of the act in question,--- the writer of these sheets, who otherwise would have remained unknown, conceives that he cannot more effectually discharge his duty to that particular company * for which he has the ho-

* British Ale Brewery.

none to act, and from whose numerous and respectable members, he has at all times received the most polite attention, than by laying before them and the public at large, that information which has been the result of close and laborious research; discussing the great question of Joint Stock Companies under all its bearings; investigating their legality according to existing acts of parliament; examining, if legal, how far they are expedient as being beneficial to the public, and productive to the state: and how far, by co-operating with the legislature, they tend to check those frauds and abuses, which monopoly is so incessantly anxious to multiply and perpetuate.

In referring to Joint Stock Companies, the writer wishes to be understood as speaking *generally*. It is by no means his intention either to state or to insinuate that the present spirit of speculation might not have been in some instances carried too far, and have possibly in some degree approximated to those associations which were formerly denounced by the legislature; at the same time he hopes he shall not be deemed guilty of being actuated by any censurable partiality in maintaining, that the principles which organize the company to

which he has the honour to belong, and those associations which have been formed upon similar principles, are not only in their construction the most invulnerable, but at the same time the most beneficial in their objects. With respect to the freedom of trade, generally considered, a more recent declaration of the legislature, hostile to that act upon which his Majesty's attorney general appears to place his general reliance, might be here quoted, together with the opinion of the present lord chief justice of the King's Bench, and his excellent arguments against all judicial interference with commercial speculations; and similar declarations of some of our greatest statesmen and writers upon political economy, since the days of Mr. Adam Smith.

That intelligent writer, whose principles were adopted by our most enlightened statesmen, (who, however opposite in other points, were perfectly agreed upon this) has asserted the danger of the legislature interfering in regulating the price, or mode of sale of articles of general consumption. We all know the disastrous consequences of attempting to remedy the scarcity of provisions in France, by establishing a maximum: abuses might also be pointed out in

the establishment of monopolies in Great Britain ; but it is much more expedient to let every evil of this nature cure itself, than to enact laws which may ultimately tend to deprive the public and the country of those advantages which must necessarily follow the well directed efforts of laudable and spirited enterprize.

If any of these companies infringe upon charters, previously granted by his Majesty ; if upon strict examination, they are contrary to any particular act of parliament, the parties aggrieved may easily obtain redress. But if, on the other hand, it should be capable of demonstration, that they are neither injurious to the rights of individuals by an invasion of their charters, nor directly adverse to any positive act of parliament, they must be legal ; and with respect to associations founded upon contrary principles, it would be the highest impolicy in the legislature, by any additional interference, to attempt to suppress institutions, which, from their inherent and organic imperfections, carry within themselves the seeds of their certain destruction.

What then, it may here be enquired, are fraudulent speculations, or in other words, " mischievous and prejudicial attempts or projects,"

started by swindling and knavish projectors to entrap ignorant individuals, to pass without any check from the legislature, which by not instantly suppressing, may be conceived to sanction them? and shall not that legislature deal as heavily with these speculations, as with illegal insurance offices, gambling, and other transactions, which are no less contrary to sound policy than genuine morality?

The answer to this is as ready as the distinction is obvious. Projects commenced without capital, or visionary speculations, in which persons of rank and property embarked, and became the dupes of crazy and interested projectors—Combinations of individuals of any particular trade meeting together to adulterate any article of daily consumption, and agreeing together not to sell but at a particular price; endeavouring to monopolize the sale of any particular article—Joint Stock Companies and partnerships for the exclusive purpose of adulteration, avarice, and monopoly;—Societies, in a word, which combined all the opposite qualities of those of the present day, were justly denounced by the legislature as nuisances. Such, indeed, might truly be termed "extravagant projects and undertak-

ings," not only mischievous and injurious to *great numbers* of his Majesty's subjects in their trade, but fraudulent combinations against their rights and properties; and being so destructive to the aggregate population of these realms, ought not to be tolerated. But associations of respectable individuals, classed according to the stake they have in the concern—associated to destroy every other species of monopoly than that which will ever be the reward of fair dealing with the public, and to co-operate with the legislature in correcting those frauds, adulterations, and abuses, with respect to the more immediate necessaries of life (regulations for the correction of which, whilst they remain a dead letter, have nevertheless swelled our statute book to a most unparalleled bulk);—associations, whose very bond of union is excellence in quality and fairness in price, organized and linked together by express covenants in trust deeds, drawn by the most experienced conveyancers in the metropolis, and so conducted as to preclude the very idea of hazard to the body at large;—so far from being the objects of criminal prosecution, ought to be countenanced and encouraged by that legislature, for the en-

forcement of whose regulations they so vigilantly and efficiently co-operate.

To illustrate the arguments intended to be used in favour of Joint Stock Companies, it will certainly be gratifying to the curiosity, if not of the public, at least of the subscribers, to give some rapid, but progressive sketches, not only of their origin, but also of those fraudulent combinations, (for such they may fairly be termed,) with which attempts have been made to identify them by a few interested individuals ; combinations against which the acts of the legislature, particularly the 6th George I. have been directly pointed. In prosecuting this disscussion, we ought particularly to keep in view *the circumstances of the times*, when the 6th of Geo. I. was enacted ; and this becomes the more necessary, because in the distinguishing features of those times, as combined with the nature of the abuse, an intelligent expounder of the laws looks for the meaning of the legislature ; and with this intelligence, and assisted by the preamble, which has justly been deemed the key to the act, he may be enabled accurately to discriminate, and precisely to acertain the

spirit of the law, and the abuses which it was intended to remedy.

Such a brief outline of the leading circumstances of the period above alluded to, is important in another point of view; since by contrasting that period, and, to use the language of the legislature, those *extravagant and unwarrantable projects* which accompanied the South Sea Bubble, with the present joint associations, we may form some idea how far the legislature intended to interpose its authority; and by proving that these latter associations, having no other common feature of resemblance than that perhaps of Transferrability of Shares, cannot by such similarity alone be considered within the act in question.

From an inquiry of the House of Commons instituted in February 1720, it appears that this new mania of Bubbles or Projects had been on foot for two or three years previous to the passing of act; and by 19th Com. Journ. 341, it appears that the principal projects or schemes then afloat, were 22 in number, viz. 6 Fisheries. 3 Marine Insurances. 3 Fire Insurances. 1 For purchasing Government Securities. 1 For raising

Money to be employed in Loans. 1 For granting Annuities. 1 For raising Thames Water in York Buildings. 1 For preventing Robberies by Sea and Land 1 For building or buying Ships to let on Freight. 1 For bringing Coals from Newcastle. 1 For furnishing Funerals. 1 For carrying on trade to his Majesty's German Dominions. 1 For raising the Growth of Raw Silk.

Such were some of the principal schemes, at the head of which were many persons of high rank and dignity. Mr. Macpherson enumerates a vast number of others, some of which were truly romantic, as will be seen from the following specimen, viz.

Projects for making salt water fresh—Hospitals for Bastard Children—Oil Patent and Land Security—Drying Malt with hot air—Improving Malt Liquors, (Capital four millions,) —Supplying London with Sea Coal (Three millions)—Raising Silk Worms—Transmuting Quicksilver into a fine and malleable Metal—Importing Spanish Jackasses for improving the breed of Mules, (projected by a clergyman)—Trading in Human Hair—Fattening Hogs—Project for a more inoffensive method of *emp-*

tying Necessaries—Curing the Venereal Disease—Making Pantiles—Furnishing Funerals—A grand Dispensary (three millions,)—Wheels and Perpetual Motions, &c.

The following extracts from Mr. Macpherson's History of Commerce will *, it it presumed, be interesting, as delineating the mania about the period of the South Sea Bubble; whose consequences were nearly as ruinous to Great Britain, as the famous project proposed by Mr. Law proved to France.

"South Sea Stock on the 2d of January, 1720, (Mr. Macpherson observes,) was at 890 per cent. and on the 12th of August, 910; and a new subscription was raised for *one thousand per cent:* and other Stocks were by this phrenzy raised above their value, viz. East India Stock 445, Bank Stock 260—which was partly occasioned by the sale of the South Sea Stock, and also out of *the Bubbles* (as they were justly termed) or numerous lesser Stocks, at very high prices, by persons who thought their money safer in the stocks of these two great companies. The advanced prices of all these stocks, greater or lesser, of every kind, were computed

* Vol. iii. p. 83.

about midsummer 1720, to amount to *five hundred millions* sterling—*five times* as much as the current cash of all Europe; and, if the yearly rent of lands and houses in Great Britain do not exceed fourteen millions, and the utmost value thereof do not exceed sixteen years purchase, on an average, or 224 millions of money: then here was above *double the value of the fee-simple of all the immovable property of the nation*, in this *chimerical traffic*, while the *real* and *substantial* traffic of many of the dealers therein, was in a great measure suspended."

After stating some of the manœuvres of the managers of the South Sea Company, to keep up the delusion which the general mania had occasioned, Mr. Macpherson enumerates several of the projects which were then in agitation —such as a Grand Fishery Company, the petition for which was signed by *seven* Peers, and several of the most opulent merchants and gentlemen; and many others which were of a most extravagant description, which required legislative interposition, and against which the 6th of George I. was expressly directed.

"The more to enforce this statute," resumes Mr. Macpherson, "the King, on the

very day he passed it, viz. 11th June, 1720, issued a Proclamation, strictly enjoining the observation of the latter part of it, relating to those projects vulgarly called *Bubbles;* whereby it might have been expected that they would all have shrunk to their original nothing in a moment.

" For a few days, indeed, some check was thereby given to this frantic traffic; yet maugre all authority, it soon revived, and even increased more than ever; and while they daily advanced in price, every one was a gainer, whereby the lower classes fell into luxury and prodigality as well as their betters.

" From morning to night the dealers therein, as well as in South Sea Stock, appeared in continual crowds all over Exchange Alley, so as to choke up the passages to it. Not a day passed without fresh projects, recommended by pompous advertisements in all the newspapers, thereby swelled enormously, and inviting subscribers to them—On some *sixpence per cent.* was laid down, on others *one shilling*, and some came so low as *one shilling per* 1000*l*, at the time of subscribing. Some of the obscure keepers of these books of subcriptions, contenting themselves with what they had got in

the forenoon, by the subscribers of *one or two millions*, were not to be found in the afternoon of the same day, the room they had hired *for a day* being shut up, and they and their subscription books never heard of more.

"On others of these projects *two shillings*, or *two shillings and sixpence per cent.* were paid down, and on some few *ten shillings per cent.* were deposited, being such as had some one or more persons of known character to midwife them into the Alley. Some were divided into shares, instead of one hundred, and one thousand, upon each of which so much per cent. was paid down; and both for them and the other kinds there were printed receipts given, signed by persons *utterly unknown*.

"Persons of quality, of both sexes, were daily engaged in many of them, avarice prevailing at this time over all considerations either of dignity or equity; the gentlemen coming to taverns and coffee-houses to meet their brokers, and the ladies to the shops of the milliners and haberdashers for the same end.

"Any impudent impostor, whilst the delusion was at its greatest height, needed only hire a room near the Alley for a few hours, and open a subscription book for something relative

to commerce, manufactures, plantations, or some supposed invention, either newly hatched out of his own brain, or else stolen from some of the many abortive projects of former reigns; and after having advertised it, he might, in a few hours, find subscribers for *one or two millions*, and in some cases more, of *imaginary* stock.

"So great was the wild confusion in the crowd of Exchange Alley, that the same project, or bubble, has been known to be sold at the same instant of time for *ten per cent.* higher at one end of the Alley, than at the other end.—Amongst these many bubbles there were some so barefaced and palpably gross, as not to have so much as the shadow of any thing like feasibility. The infatuation was at length so strong, that a project was in the newspapers, advertising for subscribing *two millions* to a certain promising, or profitable design, *hereafter to be promulgated!!!*"

After enumerating other instances of the mania of these times, the author of the History of Commerce proceeds to instance *globe permits*, which were currently sold for *sixty guineas*, and upwards; these were square pieces of paper about the size of a playing card, on which was

the impression of a seal in wax, representing a globe (the sign of the Globe Tavern, in the neighbourhood), with the motto or inscription of *Sail-cloth Manufactory Permits*, to which *no name was signed;* but the subscriber was to be thereafter *permitted* to subscribe to a new sail-cloth manufactory project, by a man who was then known to be a man of fortune, though afterwards involved in great calamities and disgrace.

"This instance out of one hundred more (continues the author above-mentioned), that might be produced, is sufficient to display the frenzy of the times: when taverns, coffee-houses, and even victualling-houses, near the Exchange, were constantly crowded, and there was known to be much extravagance."

Such was the situation of the times, and the popular mania, as described by the author above quoted—and as from the words of the statute, we may more distinctly trace the object of the legislature, it is deemed indispensable to state all the clauses of the act which have any bearing upon the subject of discussion.

The 6th Geo. I. c. 18. is entitled, "An act for better securing certain powers and privileges intended to be granted by his majesty, by two

charters, for insurance of shipping and merchandize at sea, and for suppressing several *extravagant and unwarrantable undertakings*."

The preceding sections of this act relate to the establishment and regulation of the marine insurance offices; but the following are the enactments for suppressing the *extravagant and unwarrantable* undertakings pointed at in the act.

Whereas it is notorious that several undertakings or projects of different kinds, have since the 24th day of June, 1718, been publickly 'contrived and practised,' or attempted to be practised within the city of London, and other parts of this kingdom, as also in Ireland, and other parts of his majesty's dominions, which 'manifestly tend to the common grievance, prejudice, and inconvenience, of great numbers of your majesty's subjects in their trade or commerce,' and other their affairs, and the persons who contrive or attempt such 'dangerous and mischievous' undertakings or projects 'under false pretences of public good,' do presume according 'to their own devices and schemes, to open books' for public subscriptions, and 'draw in many unwary' persons to subscribe therein towards raising great sums of money, whereupon the subscribers or claimants under them do pay 'small proportions' thereof, and such proportions in the whole do amount to 'very large sums,' which 'dangerous and mischievous' undertakings or projects do relate to several 'fisheries,' and other affairs wherein the trade, commerce, and welfare of your majesty's subjects, or great numbers of them are concerned or interested: and whereas in many cases the said undertakers or subscribers have since the said 24th day of June, 1718, presumed to act 'as if they were corporate bodies,' and have pretended to make 'their shares in stocks transferrable for so doing; and in some cases the undertakers or subscribers, since the said 24th day of June, 1718, have acted or pretended to act 'under some charter' or charters, formerly granted by the crown for some parti-

cular or special purposes therein expressed; and have used or endeavoured to use the same charters for raising joint stocks, and for making transfers or assignments, or pretended tranfers or assignments for 'their own private lucre,' which were never intended or designed by the same charters respectively; and in some cases the undertakers or subscribers, since the said 24th day of June 1718, have acted under some obsolete charter or charters although the same became void or voidable by nonuser or abuser, or for want of making lawful elections, which were necessary for the continuance thereof; and many other 'unwarrantable practices, (too many to enumerate) have been and daily are, and may hereafter be contrived, set on foot, or proceeded upon, to the 'ruin and destruction' of many of your Majesty's good subjects, if a timely remedy be not provided: And whereas it is become absolutely necessary, that 'all publick undertakings and attempts tending to the common grievance, prejudice, and inconvenience of your Majesty's subjects in general, 'or great numbers' of them, in their trade, commerce, or other lawful affairs, be effectually suppressed and restrained for the future, by suitable and 'adequate punishments' for that purpose to be ascertained and established: Now 'for suppressing such mischievous and dangerous undertakings and attempts, and preventing the like for the future, be it enacted, That from and after the 24th of June, 1720, all and every the undertakings and attempts 'tending to the common grievance, prejudice, and inconvenience of his Majesty's subjects, or great numbers of them, in their trade, commerce,' or other lawful affairs; and all publick subscriptions, receipts, payments, assignments, transfers, pretended assignments and transfers, and all other matters and things whatsoever for furthering, countenancing, or proceeding in any 'SUCH undertaking or attempt,' more particularly the acting or presuming to act as a corporate body or bodies; the raising or pretending to raise transferrable stock or stocks; the transferring, or pretending to transfer or assign any share or shares in such stock or stocks, without legal authority either by act of parliament, or by any charter from the crown, to warrant such acting as a body corporate, or to raise such transferrable stock or stocks, or to transfer shares therein; and all acting or pretending to act under any charter formerly granted from the crown for particular or special purposes therein expressed, by persons who do or

shall use or endeavour to use the same charters for raising a capital stock, or for making transfers or assignments, or pretended transfers or assignments of such stock, not intended or designed by such charter to be raised, or transfered; and all acting or pretending to act under any obsolete charter become void or voidable by nonuser or abuser, or for want of making lawful elections, which were necessary to continue the corporation thereby intended; shall as to all or any such acts, matters, and things as shall be acted, done, attempted, endeavoured, or proceeded upon, after the said 24th day of June, 1720, for ever be deemed to be illegal, and void, and shall not be practised or in any wise put in execution.—§ 18.

From and after the said 24th day of June, 1720, all such 'unlawful undertakings and attempts' so tending to the common grievance, prejudice, and inconvenience of his Majesty's subjects, or a great number of them, in their trade commerce or other lawful affairs,' and the making or taking of any subscriptions 'for that purpose,' the 'receiving or paying of any money,' upon such subscriptions, the making or accepting of any assignment or transfer, or pretended assignment or transfer of any share or shares, upon any such subscription, and all and every 'other matter and thing whatsoever for furthering, countenancing, or proceeding' in any 'such' 'unlawful undertaking' or attempt, and more particularly the presuming or pretending to act as a corporate body, or to raise a transferrable stock or stocks, or to make transfers or assignments of any share or shares therein, without such legal authority as aforesaid, and all acting or pretending to act under any charter formerly granted from the crown, for any particular or special purposes therein, expressed by persons making or endeavouring to make use of such charter, for any such other purpose not thereby intended, and all acting or pretending to act under any such obsolete charter as is before described, and every of them, as to all or any such acts, matters, or things, as shall be so acted, done, attempted, endeavoured, or proceeded upon after the said 24th day of June, 1720, shall be deemed to be a 'public nuisance,' and the same, and all causes, matters, and things relating thereto, and every of them, shall for ever hereafter be examined, heard, tried, and determined as 'common nuisances,' are to be examined, heard, tried, and de-

termined, by or according to the laws of the realm; and all offenders therein being thereof lawfully convicted, upon information or indictments, in any of his Majesty's Courts of Record at Westminster, or in Edinburgh, or in Dublin, shall be liable to such fines, penalties, and punishments, whereunto persons convicted for 'common and public nuisances' are by any of the laws and statutes of this realm subject and liable, and morover shall incur and sustain any further pains, penalties, and forfeitures, as were ordained and provided by the statute of provision, and 'præmunire' made in the 16th year of the reign of King Richard the Second.—§ 19.

If any merchant or trader, at any time after the said twenty-fourth day of June, 1720, should suffer 'any particular damage' in his trade, commerce, or other lawful affairs, by occasion, or means of any undertaking or attempt, matter or thing, by this act declared to be unlawful as aforesaid, and will sue to be relieved therein, then and in every such case, such a merchant or trader shall and may have his remedy for the same by any action, to be granted upon this statute against the persons, societies, or partnerships, or any of them, who contrary to this act, shall be engaged or interested in any such unlawful undertaking or attempt; and every such action shall be heard and determined, in any of his Majesty's Courts of Record aforesaid, and no more than one imparlance shall be granted or allowed, and in every such court he shall recover 'treble damages' and all costs.—§ 20.

If any broker or person acting as a broker, for himself, or in behalf of any others, at any time or times after the said 24th day of June 1720, shall bargain, sell, buy, or purchase, or contract or agree for the bargaining, selling, buying, or purchasing, of any share or interest in any or the undertakings, by this act declared to be unlawful, or in any stock or pretended stock of such undertakers, that then, and in every such case, every such broker or person acting as such, shall not only be disabled, and rendered incapable to be, or act as a broker for the future, but shall also forfeit and lose the sum of 500l. so to be recovered, to wit, one moiety thereof to the use of the King's Majesty, his heirs and successors, and the other moiety thereof, to the use of

any person or persons who will inform or sue for the same in any of his Majesty's said Courts of Record, as aforesaid, with full costs of suit.— § 21.

By sections 22, 23, and 24, this act is not to extend to undertakings before June 14, 1718; to prejudice the two corporations hereby erected; nor the South Sea Company.

By section 25, nothing in this act shall extend or be construed to extend to prohibit or restrain, the carrying on of any 'home or foreign trade in partnership', in such manner as hath been hitherto usually, and 'may be legally done,' according to the laws of this realm now in force, excepting only as to the 'insuring' of ships and goods at sea, or going to sea; and lending money upon bottomry.

It has been considered expedient to give the particular clauses of this act more in detail, as the act itself is out of print, and as these clauses constitute the text upon which the writer of these sheets begs permission to offer the following comments.

The 6th of George I. had in view a two-fold object. The one to establish the two offices for Marine Insurance—on the principle that a Joint Stock would not only be a greater security to merchants of this country in cases of loss; but that it might also induce foreign merchants to make their insurances in London —the act accordingly proceeds to frame provi-

sions, for establishing and regulating these Marine Insurance Companies; giving them an exclusive right (with some very trifling exceptions), to act as a company to effect insurances, and lend money on bottomry. The other object of the act stated in the preamble was for suppressing many *extravagant* and *unwarrantable undertakings*.

It commences, as we have seen, with reciting that it *was notorious*, that several *undertakings* or *projects* of different kinds, had since June 24, 1718, been publickly *contrived* and *practiced*—which *manifestly* tended to the *common grievance*, *prejudice*, and *inconvenience of great numbers* of his *Majesty's subjects* in *their trade and commerce, and other their affairs*.

The mania for projects about this period, as recorded by the historian, appears to have been almost universal. No sooner had the Mississippi bubble projected by Law, evaporated in France, than the South Sea and all the minor bubbles which attended it, were no less extravagantly and ruinously prevalent in England.

We have before traced in the preceding extracts, some of the leading symptoms of this

extravagant influenza, which was then at its *acme*;—that property to the amount of *five millions* was embarked, as Mr. Macpherson observes "in this *chimerical traffic*, whilst the *real and substantial traffic* of many of the dealers therein was for many months in a great measure suspended;" that this mania was almost universal—infecting the rich who contributed to support it, and the poor with luxury and prodigality; that all the coffee-houses, taverns, and victualling houses in the neighbourhood of Change Alley were *thronged* by the males and their brokers; that the latter negociated their business with the females at the shops of milliners and haberdashers; that *from morning to night*, the dealers in bubbles appeared in *continual crowds* all over Change Alley, so as to *choke up the passages through it*; that books were opened for subscriptions as low as *sixpence per cent.*; that the projectors hired their rooms *but for a few hours*, and afterwards were no more heard of; that these projects, some of which were, as has been before stated, for Importing Jackasses—Emptying Necessaries—Wheels with Perpetual Motion—Curing the Venereal Disease—Building Hospitals for Bastards, &c.—were at once, if not

ridiculous, at least wild and extravagant; that these nuisances had continued for nearly three years. When all these abuses, with many others which might be enumerated, are collectively considered, they may be truly termed, in the emphatic language of the legislature, *extravagant* and *unwarrantable*:—and accordingly the preamble states, that these *unwarrantable practices*, which had been too many to enumerate, had been and daily were, and might be contrived, &c. to the *ruin and destruction of his Majesty's subjects, in general, or great numbers of them, in their trade and other affairs*—and concludes with praying that these abuses should be restrained and suppressed, and that adequate punishments should be for that purpose established.

Accordingly, for suppressing SUCH *mischievous* and *dangerous* attempts, &c. and preventing the like in future, the 18th clause enacts, that *all undertakings* and *attempts*, tending to the *common grievance, prejudice*, and *inconvenience* of *his Majesty's subjects*, or *great numbers of them, in their trade, commerce, or other lawful affairs; and all public subscriptions, receipts, payments, assignments, transfers, &c.* and *all other matters or things* whatsoever, for further-

ing, countenancing, or proceeding, in any *such* undertakings or attempts—(viz. such *unlawful undertakings and attempts, tending to the common grievance and inconvenience of his Majesty's subjects,* or great numbers of them, in their trade commerce, or other lawful affairs; and which had been termed *mischievous and ruinous undertakings)* more particularly the acting as a corporate body; *raising transferrable stock;* or acting under any *obsolete charter,* become void or voidable, (still keeping in view according to the subject matter, and express object of the act—raising *such* transferrable stock for the express purpose of carrying on such *dangerous* and *mischievous undertakings,* as described in the preamble to this part of the enacting clauses), *should be deemed illegal and void;* and not be practised, or in any wise put in execution.

By the 19th section, all *such unlawful attempts or undertakings,* tending to the *common grievance,* prejudice, or inconvenience, &c. as in the preceding clause, or taking of any subscriptions *for that purpose, or receiving, or paying any money upon such subscriptions,* or making or accepting of any assignment or transfer of any share, &c. and every other mat-

ter and thing whatsoever, for furthering, countenancing, or proceeding, in any *such* undertaking, (viz. such *mischievous* and *ruinous undertaking*, tending to the common grievance as above described) or acting under any obsolete charter, for promoting *such* mischievous and ruinous undertakings, should be deemed to be a *public nuisance*, and be examined, heard, tried, and determined as a *common nuisance*, and the persons convicted should be liable to all the fines and penalties inflicted by any statute, upon persons convicted for common or public nuisances, and also to the penalties and forfeitures of a premunire.

It is necessary here to observe, that the immense crowds which *choked up* Change Alley from morning till night, drawing away industrious tradesmen from the regular profits of industry, in their regular trade, to speculate in this chimerical traffic—the *sixpenny subscription books*, for such unwarrantable and extravagant projects (such as have been before mentioned, viz. importing Spanish Jackasses—making Quicksilver malleable, &c.)—by swindlers who were here to-day but had absconded by the morrow, could only be characterised in legislative language, as a *common or public nui-*

sance; and all the parties so contributing to *such* common nuisance, were justly subjected to the same species of punishment, and the projectors, or more properly swindlers, who availed themselves of the mania of the times to take advantage of the public credulity, by opening their subscription books, were as justly deemed guilty of a premunire.

By the 20th section, merchants or tradesmen who might suffer any particular damage in consequence of any undertaking by this act deemed unlawful, were empowered to bring their actions upon this act, against any of the persons, societies, or partnerships engaged in any such undertaking, and upon verdict were to recover *treble* damages and all costs.

By the 21st section, every broker, or person acting as such, transferring any stock, in any *such* undertaking, &c. (viz. such mischievous and unwarrantable undertaking, and tending to the common grievance, &c. was to be incapacitated from acting as a broker, and liable to a penalty of 500*l.*

Two other statutes have been quoted against Joint Stock Companies, viz. the 6th of Ann. c. 22, and 7th Ann. c. 7; but these are as expressly confined to the Banking Trade, as the

6th of Geo. I. is to Marine Insurance. By these statutes every association or partnership consisting of more than *six persons*, for the carrying on the Banking Trade, and acting as an association or partnership for Marine Insurance, is declared illegal.

By another act also of the present king, 18th Geo. III. for preventing combinations in the Coal Trade, it is enacted, "That any persons exceeding the number of *six*, associated together for purchasing coals for sale, shall be deemed an unlawful combination to increase the price of coals."

These are all the acts which specifically regulate partnerships; but not one of them will in the present instance apply—they are all penal acts, and must be construed in the strictest letter—they all specifically define their object, and the precise line of demarcation is at once definitively, explicitly, and unequivocally drawn.

With the exception then of Marine Insurance, Banking, and the Coal Trade, associations are not declared illegal by any positive act which can be found upon the statute book.

A doctrine of this description is as absurd as

it would otherwise be dangerous.—Is it for a moment to be contended that those numerous public companies—at once respectable to themselves and beneficial to others, which originated long previous to the present Joint Stock Companies—and which have been suffered to continue so long unmolested—Companies, which in common with the present Joint Stock Companies, have no other bond of union than a trust deed;—are therefore illegal?—Those persons who contend that the acts above alluded to apply to Breweries, Distilleries, and other Companies not mentioned in the act, involve themselves in the absurdity of inferring a general from a particular negative.

Are all these Companies to be now considered as illegal, by one act, because consisting of more than six—or are they to be deemed by another, projects or undertakings, mischievous and prejudicial to his Majesty's subjects?

Why have these Companies been suffered to exist so long? Why have they not been prosecuted as nuisances?—Why not call forth the powers of the first criminal officer of the crown, to annihilate these Companies in their formation?—Why not brand each individual

subscriber with the penalties of a preminure ?—Is it from mercy that these Companies have been so long suffered to exist unmolested—or from a consciousness that they were invulnerable to the attack of any act to be found in the statute book ?

It would be ridiculous to talk of the freedom of trade in a country, which owes its present aggrandizement to trade, if we were to be told that any sums, however large, might not be raised for legal speculations, by any number of subscribers, and that the whole might not divide the profits in proportion to their respective contributions !

. It is indeed true, that in large pecuniary speculations, it is frequently deemed expedient to apply for acts of incorporation ; but it is conceived that the advantages to be derived, may be obtained as well without such acts of incorporation as with them.

For if, as in the present Joint Stock Companies, the subscribers at large authorise and appoint a certain number of their own members, nominally, ostensibly, and responsibly, for the joint benefit of all, to conduct the whole concern, such individuals so nominated, would

it is conceived, possess as much legal and necessary power, to act for the benefit of such concern, as they could possibly derive even from the exclusive sanction of an act of parliament.

Thus any Joint Stock Company would derive as much benefit from their agents, so chosen, under whatever denomination they may be appointed to act, whether as governors, directors, trustees, &c.; as if such persons were vested with their functions under the sanction of the legislature.

In the Golden Lane Brewery, for instance, the subscribers amount to several hundreds; but relying upon the competency of Messrs. Brown and Parry, they have assigned the whole powers of management to these gentlemen; and as a proof of the judgment of the electors, and the competent eligibility of the persons so nominated, the subscription shares, which were originally only 50*l.* have within the space of two years, risen nearly to 100*l.*—the Market price within one year and half being 94*l.*

Other institutions proceed upon similar principles, with little other difference than perhaps that of their objects—how these can be

deemed mischievous attempts or projects, it is difficult to determine.

If the names of the Brewers be admitted, and regularly entered at the Excise, his Majesty has sufficient security for the duties; and the Brewers may be prosecuted for any violations of the Revenue Laws. At the same time it is essential to observe, that from the large and respectable guarantee which they are required to give, there seems little danger to be apprehended on that account.

There is no necessity that the names of all the Proprietors should be known to support any action; consequently individuals have no more difficulty in obtaining redress for any civil injury from the ostensible persons acting as agents for any of the Joint Stock Companies, than they would have in proceeding against any chartered company whatever.

Another attempt has been made to intimidate the individuals embarked, or intending to embark in Joint Stock Companies, by asserting, that they could in no instance whatever exonerate themselves, or their property, from the responsibility of a partnership, after they had once signed the deed, although they had re-

gularly assigned their shares, and had no longer any connection with the concern—such an assertion is too ridiculous to impose even upon the most implicit credulity.

As, however, such an opinion has gone abroad, and has been said even to have been sanctioned by counsel;—let us examine a little into the doctrine of the law of partnership, and see how it applies to the point in question.

In every partnership, it is well known that the property of every individual, in case of the deficiency of any of the rest of the partners, stands responsible for the debts of the firm; nor can the partners by any engagement amongst themselves, whether by deed or otherwise, exonerate themselves from such responsibility.

Any contract therefore which provides that no partner shall be responsible beyond the extent of his property in the firm, however binding upon the contracting parties composing that firm, would nevertheless be void with respect to the public.

It is certainly true, that until due notice of an alteration in the firm, or a dissolution, to all the former creditors and correspondents of the house, that not only the joint and several shares

in the capital employed, but the joint and several property of all the partners not employed in trade, would be made responsible.

Hence it becomes necessary in case of dissolution, to give notice in the Gazette; but probably even this notice would not be sufficient, if the party subsequently giving such credit had never had such notice—but if, on the contrary, notice were so publicly given, and understood, of one partner disposing of his share or interest in the concern to another, it would surely be too preposterous to assert, that such partner, so transferring his share, should be responsible for debts contracted subsequent to his having formally relinquished, and completely abandoned every connection with the concern.—Such a proposition would carry the doctrine of partnership responsibility to a most monstrous and dangerous extent.

But it may perhaps be objected, that there is no parity of reasoning whatever between partnerships, consisting of a few individuals, as customarily carried on, and Joint Stock Companies, which are *sui generis*, and in their nature anomalous.

It has been elsewhere observed, that the

objects the legislature had in view, were to guard the public from impositions, and at the same time to protect the rights of individuals.

Let us examine whether these points are not sufficiently attended to, at least in two or three of the Institutions, the articles of which have come more particularly within my own knowledge. In those it is stiuplated that the beverage brewed, shall be from Malt and Hops only, and that the brewers, if required, shall once every month take an oath before some magistrate, tō verify that fact.

This regulation, it is presumed, will not be considered as "a mischievous project, injurious to his Majesty's subjects," although the present ale brewers, or perhaps the druggists, may have some cause to complain of it—these gentlemen however are probably better advised than to pray in aid of the attorney-general, armed with the two-edged sword of the 18th Geo. I.

Let us examine how far the subscribers can be injured, or to speak in the language of the enemies of these institutions, how far can they possibly become the dupes of interested projectors.

In the first place, the object of the institution is known—the regulations by which it is organized, have been assented to and approved —the shares have been limited to a reasonable number—the sums paid upon subscription, and the instalments, are easy—the subscribers have all the power of transferring their shares, under, nevertheless, some few necessary qualifications, whenever they think proper, and which they will probably do at a premium—the sums subscribed are all paid into the hands of a respectable banker—the accounts of the concern are audited every quarter, by a distinct body of gentlemen of the highest respectability, and a committee meets every week for the purpose of providing for the incidental expences of the preceding week, and settling the accounts of the concern; and such committee has the power of ordering drafts for monies in the hands of the bankers, either for making the necessary advances, on account of the concern, or drawing to make dividends to the proprietors; and the trustees issue drafts accordingly to the persons who are to receive the money—such drafts to be made in committees assembled, and attested by the secretary.

The acting committee have also power to dismiss the brewers—to require from them any reasonable security for the integrity of their conduct—to quit the concern without interruption when discharged from office, and to pay over and transfer any balance of money, books, and vouchers in their hands.

There are some other very important regulations, which have a double tendency to guard the public, and to guarantee the subscribers against any ruinous responsibility ; viz. as That no debts, except for wages of servants hired for certain periods, shall be contracted by the concern ; but all Malt, Hops, &c. are to be paid for on delivery. Thus by a fundamental article in this institution, no debts can be contracted, and consequently no hazard can accrue to the public in their dealings with a company of this description.

Neither can any of the subscribers be injured —all the shares are either paid up, or in course of payment ; the money is vested in the hands of respectable bankers ; and such judicious checks are established with respect to drawing it out, as to render fraud next to impossible.

So little enveloped in mystery are the trans-

actions of the directors, that every individual member may have access to their proceedings: in a word, the proceedings of the whole concern, either are, or may be known, to every individual composing it.

Surely a society so organized, cannot be deemed a nuisance, like the *sixpenny subscriptions*, before cited from Macpherson—where the projectors hired a room for a few hours, opened their books, and absconded with the money; nor is it an 'extravagant or unwarrantable undertaking,' to restore to the people of England their wholesome beverage, composed of genuine malt and hops, notwithstanding any clamour of the brewers, or the druggists; whose profits may be thereby in no small degree injured.

With respect to the distilleries also, it would not be deemed, it is presumed, an extravagant or unwarrantable undertaking, to substitute juniper for turpentine, and produce a more excellent spirit by that measure which can alone effect so desirable an object, viz. by establishing that competition which will inevitably produce so advantageous a change.

Any prosecution therefore against these companies, must come with a very bad grace from those overgrown capitalists who have so long as-

sumed an exclusive right to monopolize an article of general consumption, and deal it out to the public, at any price, and of any quality they may fix amongst themselves.

Little cause indeed have the brewers or distillers, to originate a prosecution, which by sanctioning competition must destroy monopoly —little cause have the gentlemen to talk as injured individuals, on account of the aggregate capital of a company, whose capital for the benefit of the public does not amount to one fourth part of those capitals, which have enabled them to raise the price and regulate the quality, without having hitherto found any power to control their dictates; whose avaricious gains are much more their object than any advantage to the Public. The price of gin has several times been raised, whilst malt has rather decreased than otherwise.

The immense capitals of the distillers individually, is upon an average considerably more than that of some of the Joint Stock Companies; and by establishing the price and quality of the article, the whole aggregate of their immense capital, is not only to the disadvantage of the public, but to the revenue; an evil that could only be counteracted by that competition,

which would result from the establishment of other distilleries.

With respect to one part of the act, which perhaps is to be perverted from its sound construction, and which will be treated upon hereafter, viz.—"unwarrantable and extravagant projects, injurious to great numbers of his Majesty's subjects, in their trade and other affairs"—in the first place, as it will be more minutely shewn, this act has no reference to any particular trade, except in the clause which gives an action with treble costs, &c.

But it is not true, that these associations can do any serious mischief to individuals in the vast state of population of this metropolis; estimating in comparative proportion the small number of Joint Stock Companies, the interest of the individual fair trader can never be injured; some overgrown capitalists, perhaps, may indeed divide less profits than they have heretofore accumulated, but of this they have no reason to complain. Instead of imitating the conduct of the foolish countryman, who prayed to Hercules to assist him, let them diminish or annihilate competition by producing a better article.

No doubt can be entertained, that Joint

Stock Companies, or associated companies of any description, can only exist whilst they adhere to their original principles; the moment they deviate from these, they will read their fault in their punishment, and must either return to their original principles, or they will dwindle into oblivion.

There is then no danger either to the public or to individuals to be apprehended from these Joint Stock Companies: absurd it is therefore to call in the aid of the legislature to abolish them.

For however extensive the power, however large their avowed capital, and capable of concealed increase, yet is there little apprehension of injury to individual fair traders, from such a company, even if they were to attempt it.

In speaking of a company, even though incorporated by parliament—the London Flour and Bread Company—in an excellent pamphlet, published in defence of persons concerned in the Corn Trade, (supposed to have been written by Sir Thomas Turton) the argument relative to the superior advantages which individual trades would have over companies, are at once so cogent and so applicable, that the following extract, as bearing directly upon the subject in

question, will, it is conceived, require no apology. "The numerous disadvantages (says the Author) which such a company (the London Flour Company) would have to encounter, would amply guarantee the public against any injurious consequences.

"In the first place, the articles they deal in will not admit of monopoly.—it is true indeed, that in a market scantily supplied, the purchases of such a company might have some effect; but the moment the demand was known, the supply would regulate itself accordingly.

"The perishableness of the commodity; the great loss on the smallest diminution of the price; the heavy expence of warehouse room; the loss of interest on the money sunk; the immense sums which in times of scarcity (the only times when monopoly can be dangerous), are necessary to be taken out of their trade, for the purpose of speculation; the almost certain combination which they would run the hazard of exciting against them, from the whole trade, who with an eye of the most scrupulous jealously would watch their proceedings, and that fear of public antipathy and resentment, which they would naturally feel, all these would

combine together as ample securities to the public against any danger of monopoly."

The moment any of these companies deviate from their principles—if the respectable subscribers should once find, as the opponents of these companies have boldly asserted, with a degree of calumny which carries with it its own refutation, that instead of following the fair principles with which they started, instead of the spirit of benevolence and public good being generally extended through the concern, they have become the dupes of designing projectors;—the moment even such a suspicion should operate upon the minds of some of the most timid, although not perhaps the least respectable, it would either drive them from the Institution at once, or occasion them to watch the conduct of their colleagues, with a degree of distrust and jealousy, which would damp all spirit, and depress that energy and unanimity so essential for carrying on an extensive and important concern.

It has before been observed, that from the difficulties which companies have to encounter, they can form no just ground for individual jealousy; it is equally capable of demonstration, that the public cannot possibly sustain any injury from such establishments.

Whilst it is well-known that nefarious combinations have taken place amongst individuals to adulterate and extort, pregnant with frauds and abuses, which have long eluded the vigilance of the legislature; a generous rivalship, on the contrary, will spring up between Companies, and the struggle will be, which shall produce the most excellent article at the most reasonable price; and even in the case of monopoly, much less danger is to be apprehended from Companies formed like the present, than from that which arises from a combination of interested individuals.

These may indeed combine: actuated alone by avarice, they may entirely lose sight of that laudable rivalship, which should ever actuate the fair dealing tradesman; that liberal emulation and fair competition, which secured in foreign markets the preference to British manufactures, and which by increasing consumption, occasioned its own reward. Individuals with large capitals, and unconnected establishments, possessing the most extensive, not to say oppressive influence, with the almost exclusive command of the market, have, we know, combined, and but for some of these now persecuted Joint Stock Companies, might have

broke the back of the public with all the weight of accumulated monopoly.

It has been estimated (and if the calculation be true it demands instantaneous legislative interposition) that of 50,000 Public Houses, which is the amount estimated by Mr Colquhoun, considerably more than *one half* in the metropolis, and *nine tenths* in the country, are held under Brewer's Leases—in most cities and corporate towns, the very magistrates are known to be Brewers, some of whom do not confine themselves to beer alone, but extend their dealings to coals and spirits, and are at once Brewers, Distillers, and Coal Merchants; when it is considered that the unfortunate tenant is in most cases compelled to take any trash which his landlord may think proper to deal out to him; when the legislature has in so many repeated enactments proscribed the use of grains of paradise, coriander seeds, cocculus Indicus, quassia, liquorice, molasses, tobacco, copperas, alum, alkali, thyme, salt, glue or white leather size, orpiment, opium*, &c. and prohibitively excluded all other articles, but

* The above are said to have been published by authority as ingredients used in the brewing of Porter. See Monthly Magazine, for December, 1807.

malt and hops; when the wharfs of the Excise have been loaded with casks of deleterious ingredients, seized by the officers of the revenue, upon the premises of the Brewers; when notwithstanding the execrable quality of 'this broth decocted from drugs and water, with the addition perhaps of a small proportion of Malt and Hops,' an attempt was made to raise its price; when all these are properly appreciated, it surely becomes a meritorious act in any individuals, separately or collectively, to second the efforts of the legislature, and to rescue the public from that overgrown Aristocracy of Capitalists, by which it has so long been oppressed; and the only mode of remedying this grievance, has been effectually demonstrated by the establishment of Subscription Breweries.

The Golden Lane Brewery was then a necessary establishment which was loudly called for, and combining the powerful and generally successful influence of property and capital, it relieved the public, and in some degree reformed those who had abused them.

Nor has the adulteration been confined to this country only;—some few months ago, a Brewer in Edinburgh was detected with having in his possession a package of the weight of *three hun-*

dred pounds, and upwards, consisting of *nine* different sorts of drugs, and was in consequence fined two hundred pounds, in the Court of Exchequer.

An injunction also, it is believed, is now pending in the above Court, between a Publican and a Brewer, under a covenant for taking beer until the Brewer can swear, that such beer was made of Malt and Hops, and contained no Nux Vomica.

But the instances of abuse and adulteration are too frequent and too notorious to require any argument to prove them. Seizures of adulterating ingredients have been repeatedly made, but the matter has been hushed up, and the names of the parties have seldom been made public; those, however, who doubt the fact, might have gone to the wharf at the Excise Office, where from the initials cut upon the casks, the names of the delinquents might easily have been made out.

Abuses of this nature, however, can only be practised by individuals—with Companies they are impossible. Secrecy is the very soul of every nefarious combination to adulterate or extort; but with Companies there can be no combination, for they are so organized that all their

proceedings are open to the inspection of every subscriber—in a word, every transaction is of so public a nature, that any attempt at fraud, irregularity, or abuse, would not only be absurd, but abortive, and the blast of public indignation, would at once annihilate the company and the abuse. From these circumstances, and many others which might be adduced, it may be fairly inferred that the public derive the greatest benefit from companies, and that from the very essence of their principles, the basis of their pretensions, and the publicity of their conduct, less danger is to be apprehended from them than from individuals.

It has been conceived expedient to expatiate upon this subject, because it has been advanced by some, that Joint Stock Companies are unnecessary, and that things ought to proceed in their usual course. This assertion is perfectly consistent with the disposition of those who have so long assumed the exclusive right to physic, if not to poison the public; the substitution of malt and hops for those pernicious nostrums so copiously introduced, being certainly to these gentlemen a serious evil; but it is not very consistent *for them* to deprecate Companies, which their own abuses have rendered

necessary, and which have now been proved to be the only means of rescuing the public from that avarice and extortion, which have so long tyrannized over and abused it.

Subscription Breweries therefore became the only remedy for the adulteration of malt liquors: the Golden Lane Brewery has commenced and continued its career successfully, and its example has been followed by the British Ale and other Breweries, which must solely depend for support upon the opinion of the public, who will naturally select and encourage that article, which has the most general claim to excellence.

Let it not be said that Joint Stock Companies are unnecessary. These establishments have already proved themselves adequate to rescue the public from extortion and monopoly, which will necessarily diminish in proportion, as these establishments multiply and promote competition.

With respect to the Breweries, this fact is established; but there is another monopoly if possible more gross, and necessary to be checked, more particularly because the strong arm of the law has been attempted to be brought forward to support it, by attacking the only

institution which can stand any chance of destroying it.

The monopoly alluded to is that of the Malt Distilleries of which there are only *ten* in this country. That ten persons of enormous capital, should so long have manufactured their spirits from any ingredients, and sold them at any price they thought proper, is no less singular than that the public spirit of individuals should so long have delayed those rival establishments, by which alone these abuses could be remedied: but the oppression has so long been patiently endured that these gentlemen begin to think that they have absolutely acquired a right, to substitute turpentine for juniper; and to raise the price of their spirits as often as they think proper.

Next to a public Brewery, then, a public Distillery, (or perhaps three or four, for the market is sufficiently wide,) becomes absolutely necessary; these Distilleries require an extensive capital; which honestly exerted, in opposition to that overgrown aristocracy of capitalists, which once are said to have had the impudence even to attempt to dictate to the State, would at once annihilate the abuse and be highly beneficial to the public.

In short Breweries and Distilleries, so far from

being classed as *extravagant and unwarrantable* attempts or projects, may, on the contrary, be proved to be salutary, reasonable, and necessary coadjutors to the legislature in counteracting fraud, abuse, and extortion.

Why then in concerns where extensive capital is requisite, should it be deemed illegal for individuals to form that aggregate sum, which is so essential to counteract that monopoly, which extensive individual capitals, and illegal combinations originally obtained, and have so long attempted to perpetuate.

Some other Companies also might be enumerated, which might be beneficial to the public; such as the Fire Insurance Companies, several of which are upon the point of being established in many counties, promoted and established by noblemen and gentlemen of the first distinction. Are these also to be deemed extravagant and unwarrantable projects or attempts, and are their illustrious and public spirited patrons to be subject to indictments, or to incur the penalties of a premunire?

The Wine Company may also be considered as a laudable undertaking, particularly as it consists of publicans who are principally dealers in the article, and is advantageous in a double

sense, viz. First as it affects the consumer who might expect the article genuine and at a more reasonable rate, and secondly, as far as relates to a very numerous class of individuals, the publicans, who have so long been subjected to the mercy of the Brewers and Distillers—by rendering them more independant; and although it has been asserted, that there is an act which prohibits publicans as retailers, from having any share in Distilleries; it would nevertheless be highly advantageous to the publicans and beneficial to the public, to establish a Distillery, which from the certain consumption such an establishment would necessarily insure, would enable them to produce a more genuine article, at a price not fluctuating according to the arbitrary dictates of a few monopolizing individuals.

There can be no doubt, that when the publican can draw his own beer, distil his own spirits, and import his own wine, he will not only give more satisfaction to his customers, but in a great degree be relieved from that state of oppression and dependance under which he has so long laboured.

Various acts of parliament have been passed inflicting severe penalties upon the adulteration

of beer, spirits, tea, coffee, tobacco, &c. but there are frauds in another article, and that of the first necessity, which might be remedied by a Joint Stock Company. The Coal Trade, it is well known, is one continued scene of abuse, from the pit to the consumer.

But although by a specific act of parliament, as has before been observed, a greater number of persons than *six* are restricted from purchasing coals for sale; yet this act it is presumed might be repealed, and a company incorporated for the express purpose of a more regular supply of fuel at a more reasonable rate.

That there is a monopoly in this market notwithstanding that voluminous act, which, (whatever the framer of it might have in view), has in its operation no other effect than that of advancing the emoluments of the meter, and unnecessarily increasing the price to the consumer, is beyond a doubt; when it is thoroughly ascertained that this market, which by the act ought to be free, is monopolized by a few individuals perhaps not exceeding *forty*, through whose hands the fuel consumed by this immense metropolis, and within a circuit of twenty-five miles, must necessarily pass. How then must these monopolies be counteracted? How are these abuses

to be effectually remedied? the answer is too obvious to require an argument—by establishing competition, and by counter associations. Competition has always been the successful opponent of monopoly, and such it has always been considered by the legislature.

Several meetings have recently been called, against a combination for raising the price of posting, from fifteen to eighteen pence per mile, and resolutions have been entered into for encouraging only such post masters as would run at the old prices. This has been wisely considered by the noblemen and gentlemen associated for that purpose, as the most efficient mode of accomplishing their object, and it will probably be as successful as a former one, upon a similar occasion, which kept the price to its level.

The Golden Lane Brewery has, it is well known, kept down the price, and improved the quality of malt liquor; a Public Distillery would have the same effect on spirits; a Coal Company would reduce the price and prevent those frauds which the legislature is inadequate by any other mode to suppress, and which that very legislature most unequivocally declared its opinion, would be most effectually

suppressed by establishing a Joint Stock Company.

Some years ago, it will be recollected, that in a time of real scarcity, which was most falsely attributed to monopoly, (for monopoly was proved not to have existed); and when the price of bread was exorbitantly high, the attention of the legislature was particularly occupied in considering what was the most effectual remedy against this alledged monopoly, and what measures would tend to insure a more regular supply of the market.

And what was the only mode which the legislature in its wisdom conceived the most effectual for suppressing such monopoly, and insuring a more regular supply? The establishment of a JOINT STOCK COMPANY.

Accordingly, by the 39th and 40th of the King, c. 97, a company consisting of several noblemen, merchants, gentleman, &c. in both Houses of Parliament, was incorporated, under the denomination of the *London Flour and Bread Company*, with a capital of 150,000l. divided into shares similar to the Joint Stock Companies, with a chartered monopoly of 120,000 sacks of flour per annum, being *one*

tenth part of the whole produce of the metropolis.

The Preamble to this act begins as follows.

" Whereas the establishment of a manufactory for Flour and Bread in London or its neighbourhood, would be of considerable *benefit and utility*, and would greatly tend *to insure to the Metropolis and its neighbourhood, a more regular supply of Flour, Meal, and Bread, at more reasonable prices*—"

Here then is the opinion of the legislature, most unequivocally and precisely expressed, that Joint Stock Companies are of *considerable benefit and utility;* and there can be no doubt, but had the monopoly really existed, that this Company would as effectually have checked it, as the establishment of the Golden Lane Brewery checked the intended advance upon Porter, and at the same time increased its quality by insuring to the public a more regular supply of Malt and Hops *.

* It has been stated by Mr. Colquhoun, in his Treatise on Indigence, " that in the year 1806 the total quantity of Porter, Ale, and Beer, brewed for sale in the Metropolis, according to the returns from the Excise Office, amounted to 1,454,192 barrels, exclusive of 441,320 barrels of Small Beer: from which deducting about 254,192 barrels for ex-

The monopoly however against which the act before mentioned was directed, did not exist, nay it was proved that it could not exist; but this act will cut both ways upon this occasion; whilst in the first instance it demonstrates the opinion of the legislature in favour of Joint Stock Companies, for insuring a more regular supply at more reasonable prices, it

portation and Country Sale, there remains 1,200,000 barrels, or 168,000,000 pots of Porter and Ale, for the consumption of the Metropolis, which at the present price of five pence per pot amounts to 3,500,000 per annum."

The same gentleman estimates the Malt Liquor consumed in Public Houses in England and Wales, to amount to about *twelve millions*—consequently there never was any complaint of the scarcity of those doctored compositions, sold under the name of Porter, Ale, and Amber—but so generally were the public disgusted at this beverage, which was unanimously found so unwholesome and unpalatable, particularly in the Metropolis, that the Brewers were compelled to pray in aid of the Magistrates, to force its consumption: a resolution was accordingly entered into by the Magistrates of Middlesex, not to licence any Houses, but those which could prove a proportionate consumption of the Brewers Intire to that of Spirit.

This resolution, which was upon the face of it however illegal, would have been completely ineffectual, had not the establishment of the Golden Lane Brewery compelled the Porter Brewers to render their Beverage a little more palatable.

at the same time proves that individual fair traders can sustain no injury from these establishments.

For here was a Company consisting of persons of the first rank and opulence; incorporated by act of parliament, with a chartered monopoly of *one tenth part* of the consumption of the Metropolis, trading in an article of the first necessity: yet the Factors, Millers, Mealmen, &c. against whom it was expressly directed, sustained as little injury, as this Company obtained advantage.

In fact Companies derive no such vast advantages, as to excite the alarm of any individual traders, excepting such whose Bond of Union is Monopoly, and who consequently dread competition. We never heard that the London Flour Company; the Albion Mills Company; the Birmingham Bread Company, &c. derived any great emoluments by their association, nor probably would the Milk Company; the Pipe Company; the Taylors Company; the Pawnbrokers Company, &c. do much injury to those particular trades which they are intended to oppose.

From past experience therefore of projects which have gradually mouldered away, per-

haps it might be more prudent in the legislature to let these follow their predecessors, by those seeds of dissolution, which will be daily growing into strength, than to make any restrictive enactments, which by attacking the principle, might blend in indiscriminate censure, companies of sterling utility and public estimation.

It is scarcely considered necessary to answer, or even to notice the calumnies and scurrilities which have been thrown out against these infant Institutions, which have been stigmatized merely as projects to impose upon credulity, similar to the bubbles of the year 1720, and the parties propagating them have been accused of making the public good, which they so speciously profess, a mere pretext, to secure a good job to the directors, &c.

The object of this publication is rather to defend Public Companies upon the strict principles of law and expediency, than to reply to calumnies which carry their own refutation; or to answer observations which do not at least wear the aspect of an argument. In all the publications which the writer of this has perused upon the subject, he has found only miserable attempts at wit, or anticipated censures

pointed by malevolence. It is true that these associations in all cases profess the accommodation of the public, and certainly this representation is the most appropriate to acquire that support, but for the attainment of which they would never have associated, and without which they must necessarily cease to be: in this, there can be no quackery: to instance more particularly in the Beer, or Ale Breweries, it is not in the power of 3, or 4000 persons associated for the purpose of furnishing the public with genuine Malt Liquor, in three or four distinct associations, to compel that public to drink an inferior or adulterated article; three or four of these Breweries, as has been elsewhere observed, will enter into competition with each other —enterprising individuals will enter into competition with *them*, and the party who brews the best article, whether an individual or a company, will command a consumption in spite of every effort of monopoly; in such case the shares of the defective company will fall in value, and probably continue falling, until by some alteration or amendment of the commodity, (although the public opinion once forfeited is seldom regained) they can equal or surpass that article by which they have been excelled.

If then the public do not find their advan-

tage in supporting these Companies, they will not deal with them—the advantage of the public therefore, is very properly professed, and this pledge must be made good, or the company instead of having to count their gains, will soon have to proportion their losses.

With respect to the emolument appropriated to the directors, and those persons appointed to act for the Company in superintending and organizing the concern; it is conceived, that the expenditure is at least as economical as that of any other Individual, or Company, with a similar capital, and a similar object; but surely it is not necessary to insist, that persons deemed competent to execute the anxious functions of superintendance: upon whose vigilance and exertions the interest of the society at large, in a great measure depend: must necessarily consume a considerable portion of that time which might otherwise be occupied in more advantageous pursuits of individual interest.

Persons who dedicate their services to the interest of a general body, ought to receive from that body a renumeration in some degree commensurate with those services: few people of competent understanding and responsibility would stand forward to execute functions, which

however beneficial to others, might materially injure themselves; besides, associations so respectable and numerous, at once combine consequence with economy, by allowing liberal remuneration for honorable service.

But it is not perhaps the slightest inference in favor of these Institutions, that the opponents conscious of their being invulnerable by argument, have been reduced to those scurrilities with which they have so copiously assailed them. The best refutation of these is to appeal to the conduct of these institutions; and here, (for some at least,) the writer of this can triumphantly appeal, that the wise and salutary principles, by which they were originally created and individually cemented together; the laws which regulate their agency; the utility of their object, and their approved honor in their engagements, with the public; have hitherto stamped them of sterling value, and rendered them alike invulnerable to the impotent anger of monopoly, the malevolence of avarice, or the sneers of scurrility.

Passing over other arguments which might be urged upon the expediency of these companies, which have hitherto been but slightly touched upon; let us return to anticipate some of those

defensive arguments, which may be successfully introduced by the counsel employed to shew cause against the motion of the attorney-general; if, (which is extremely doubtful,) he should ever move to make his rule absolute.

The cause of such long delay, or why this rule, like the sword of Damocles, should be still kept hanging over these companies, perhaps it may not be very difficult to conjecture; consultations upon consultations have been held by the counsel for the crown upon this subject, which have already been considerably expensive, although certainly very inadequate to the interest which the parties concerned have in the decision; and certainly trifling to those opulent capitalists, who affect to keep themselves in the back ground upon this occasion.

If the distillers have really had any meeting, or made a joint purse for this prosecution, they would have appeared to greater advantage before the public, had they boldly avowed their object; instead of keeping behind the curtain and making a mere stalking horse of any informer, who surely would never at his own individual risk have incurred such vast expence, or hazarded so desperate an experiment.

But why has this notion been so long deferred? Perhaps the attorney-general, who is universally acknowledged as a lawyer of the most acute and penetrating mind, is clearly convinced of the extreme difficulty, not to say the impossibility, of so distorting the present companies, by the extremest effort of human ingenuity, as to bring them within the meaning of the act of George I.

For example, the Breweries and intended Distilleries. The act of Geo. I. as has before been mentioned, is directed against *extravagant* and *unwarrantable projects or undertakings*, such as we have before observed were at that time *notorious*. Is it an extravagant and unwarrantable undertaking, to substitute malt and hops for quassia, cocculus Indicus, &c. or turpentine for juniper? Is it an unwarrantable and extragant undertaking to nip extortion in its bud, by destroying an illegal combination to raise the price of porter? Yet the affirmative of these propositions must be clearly demonstrated to bring these companies within the act.

These companies then are neither 'unwarrantable nor extravagant attempts or projects,' and consequently fail in the leading feature of those projects and undertakings, which the legisla-

ture had then in view, and which have been mentioned in the preceding extracts.

These companies then are self acquitted, even from the very preamble to the enacting clauses.

Let us attempt to mark some other features of those bubbles, in which every thing that legal ingenuity might torture into the remotest resemblance, will vanish nevertheless, in proportion as we progressively advance and become more conversant with the spirit of the act.

The attempts or projects within the purview of the legislature must not only be *extravagant* and *unwarrantable*, but they must further be injurious *to his Majesty's subjects*, or *great numbers of them, in their trade and other affairs*.

To support the former term of this disjunctive proposition it be would insulting the understanding of the most unintelligent reader to insist, that genuine malt liquor, and genuine spirits, can be injurious to his Majesty's subjects. Let us penetrate the meaning of the latter term, viz. "undertakings injurious to *great numbers* of his Majesty's subjects in *their trade and other affairs*."

It is here perhaps, although, (as will be proved,) without the least ground whatever, that the

stand is intended to be made, and the battery is to be opened against these companies.

If it be contended that these companies must necessarily divide a large share of those profits, the whole of which from the most unfair, but extensive influence, some particular persons conceived they had a prescriptive right to monopolize; If fair and honorable competition can be deemed an injury; these companies plead guilty to the allegation;—they have indeed injured the brewers, by the difference between *fivepence* and *sixpence*, *per pot*; which they have kept in the pockets of the public; they have also injured the brewers, by introducing them more frequently to *the Malster and the Hop Merchant*; in this also they have further injured not indeed great numbers, but nevertheless, not a few—the Druggists. The Distilleries also may probably injure in the same degree, not *great numbers*, but at the same time *ten* very great characters, who have ever been considered as in themselves a host;—but surely it will not be contended, that these gentlemen are to have such an exclusive monopoly, that like the ancient Dutch magistracy, their trade should always be confined to a family, descending in hereditary or collateral succession. Every man by the law of England has a right to exercise his calling, with the exception of

corporate towns, and to appropriate his property in any manner he may think proper; and with as much propriety might the linen drapers, bakers, butchers, &c. in any market town, complain of any enterprizing individual of a similar trade, who might diminish their profits by selling a better article at a smaller price; as the brewers, or distillers, complain of any persons who by fair competition might reduce their profits.

Whether this be the part of the act that is to be insisted upon, or not, is immaterial, for it is certain, beyond the possibility of refutation, that the legislature by the expression *great numbers* (using the plural number) of his Majesty's subjects in their *trade* and other affairs, had not the remotest allusion whatever to any individual trade, else wherefore by the twenty-first section of the act, did it make that special provision for protecting persons of this description, by giving treble costs to any merchant or tradesman, &c. who might be injured by any of these unwarrantable undertakings? A clause upon which the Brewers might have tried the experiment upon the Golden Lane Brewery, as they could have proved specific damages, not only for the injury sustained by the quan-

tity of beer brewed by this concern, but for the greater quantity of malt and hops which they were thereby compelled to consume; they however acted more wisely; they were confident that the Golden Lane Brewery was not an unwarrantable undertaking; they at first indeed affected to call it extravagant, and attempted to discountenance by ridicule, what they knew they could no more oppose by reason than they could destroy by law.

Such then in the strict principles of Law—such in clear logical deduction, is the true construction of the statute; and precisely to this effect will doubtless be the opinion of those sages of the bench, by whom this question (if indeed it be intended to be brought forward) is to be determined.

So strongly indeed is this marked, that in every feature of that hideous abuse, which the law has so accurately described, it has at the same time pointed its penalties, and in the very nature of the punishment it has inflicted, it has most unequivocally described the nature of the object.

Those who suppose that the object of the law was to damp every species of commercial enterprize or mechanical invention, not only in-

sult their own understanding, but most grossly libel the legislature; and those who contend that merely making shares transferrable is the criterion of the legality or illegality of any commercial association or mechanical project, would thereby destroy all the efforts of genius struggling with poverty, or public spirited associations, contending with adulteration or monopoly.

Supposing an instance, and that of no uncommon occurrence, where an ingenious mechanic had invented some advantageous contrivance for facilitating any manufacturing process, or saving expence by simplifying and diminishing labour; but who being from poverty unable to obtain a patent, or to establish his improvement, so as to render it as productive to himself and family as its intrinsic excellence, and its utility to the public, warranted him to expect.—Thus circumstanced, ingenious, but friendless, he is necessarily induced to pray in aid of persons of property to assist him; supposing this poor, but ingenious inventor, were to put an advertisement in the newspapers, stating his invention, and the sum required to work it, either under the sanction of a patent, or without, and were to divide such sum so to be advanced into 20 or 30 shares,

which by a trust deed should be made transferrable? Is it for a moment to be contended, that such an undertaking, which might be demonstrated to be highly consistent and generally beneficial, is suddenly to be metamorphosed into an *extravagant* and *unwarrantable undertaking;* to be deemed a *nuisance*, and subject to all the marking punishments which so peculiarly distinguish the 6th of George I.?

Is the ingenious mechanic above alluded to be stigmatised as a crafty projector, or a cheat, contriving by false pretences and pompous advertisments, to defraud people of their money? Are those public spirited persons who come forward to assist genius struggling with poverty, to be subjected to heavy punishment, or persons having shares in such an association to be subject to the penalties of a premunire, for no other reason whatever than that they have the privilege of transferring their shares?

Such a proposition is surely most monstrous and absurd; and yet the enemies to Joint Stock Companies, are bound to go the length of supporting it.

Various other arguments might be advanced in favour of these Companies, which the professional avocations of the writer, will not permit him to enlarge upon; he might

otherwise particularly observe, that by enabling individuals to render small capitals productive, these establishments promote the increase of national wealth, and that, without depressing the laudable exertions of individual industry, which, estimating the comparatively small number of persons embarked in these Companies to the vast population of these realms, and those increased difficulties which these bodies have to encounter, cannot as far as relates to fair transactions, possibly be injured. An extensive field for discussion is also before him, upon the principles of political economy;—blocked out as we are from every port in the continent, whilst commerce, which has so long supported this free country, is gasping for breath, how essential must it be to promote internally an enterprising spirit in trade and manufactures, which may now be truly deemed, the "life blood of the state."

This spirit of industrious enterprize should at this crisis peculiarly be encouraged; it is now the main-spring which keeps in motion the wheels of the revenue, and every thing tending to damp this spirit, injures the revenue and thereby endangers the state.

Is then such a mass of property incessantly

and accumulatively productive, extending through ten thousand remote ramifications, refreshing and invigorating the whole system, when deprived of all other resources, to be at once annihilated, or sacrificed to the monopoly of individuals oppressing the public in such dangerous combination as absolutely to force the birth of that very scourge of which they now so bitterly complain?

These subjects the writer leaves to persons more competent: not accustomed to arrange his ideas for the inspection of the public, he has snatched a few moments from professional pursuits, and has hastily, and he fears, in some degree, crudely, offered his arguments in a legal point of view; from these circumstances, with the motives in which this publication originated, he relies upon the candour of liberal criticism to exonerate him from existing errors, or supposed prolixity.

To those gentlemen who compose some of the most useful and necessary Joint Stock Companies, more particularly to those belonging to that institution to which the best services of the author will be at all times devoted, and who are necessarily anxious with respect to the question now pending, he has

deemed it more satisfactory to speak intelligibly, and to incur the charge of repetition, rather than hazard that of being obscure; for their benefit he has examined this question under all its bearings, and has demonstrated, at least to his own satisfaction, how little they have to apprehend from the 6th of George I. even although its penalties are directed against them by the first criminal officer of the state.

He has attempted to demonstrate that the present Joint Stock Companies have no resemblance, no affinity whatever with those projects, or rather *bubbles*, which the 6th of George I. denounces as *extravagant* and *unwarrantable*; that the mere fact of acting as a Joint Stock Company, and making shares transferrable, is not within the penalties of that act, unless such associations and such transfers be for promoting *such extravagant* and *unwarrantable undertakings*, as the act brands with the most pointed epithets, as *mischievous* and *ruinous*, and stigmatizes as *nuisances*.

He has attempted to prove that these associations are not only justifiable, but have been rendered absolutely necessary to counteract that adulteration, fraud, and monopoly, which

the legislature so repeatedly denounces, but which have hitherto eluded the law, and which have only been checked by these counter associations, which in strict retributive justice have proved themselves the bane and antidote to those very frauds which originally produced them.

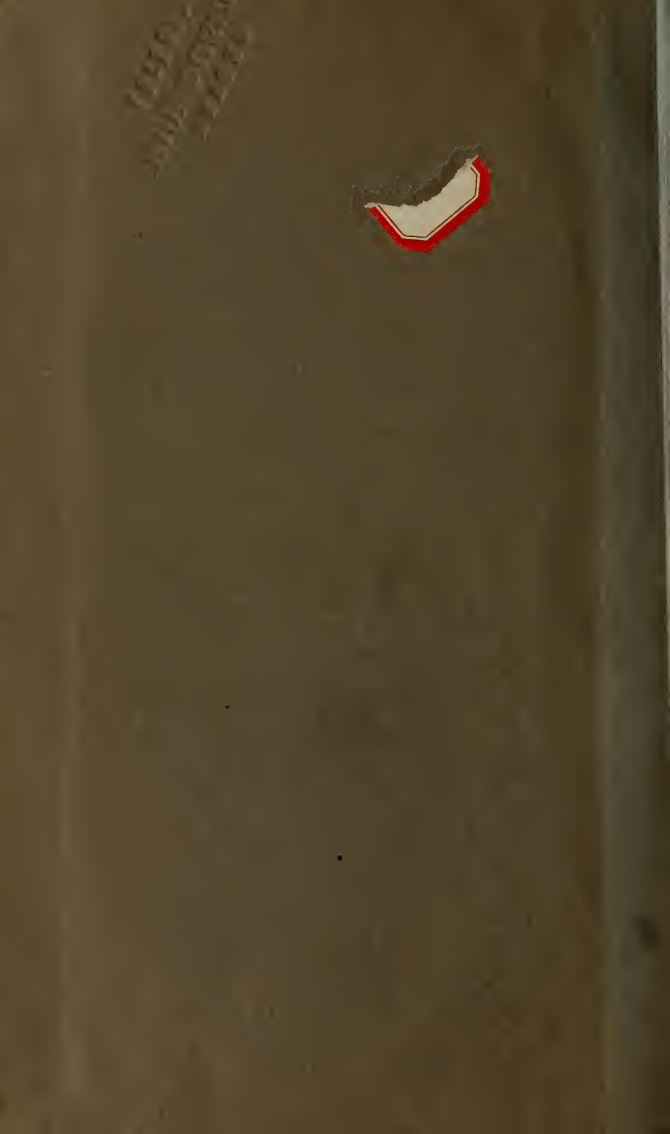
With respect to the principles which constitute Joint Stock Companies, the rules which regulate their conduct, and their object, it is now shewn, that (some of these at least), instead of being extravagant and unwarrantable undertakings, have received the most unequivocal sanction, as being consistent and highly beneficial; and the best answer to their calumniators is to refer to their conduct, which will amply demonstrate, that as far as relates to the public collectively, and to the subscribers relatively, every thing is organized and conducted upon the strictest principles of honor and responsibility, affording to all parties every security which human wisdom can devise, or legal ingenuity execute.

The attorney general therefore, instead of moving to make his rule absolute in the ensuing term, will in all probability adjourn the consideration of the subject, *sine die*.

That distinguished lawyer knows perfectly well, that unless he can prove the substitution of malt and hops for drugs, and juniper for turpentine, to be an 'unwarrantable and extravagant undertaking,' and injurious to the public; in fact, a public nuisance—little success can be expected from his application to the court of King's Bench. If however, as a legislator, he would introduce such improving regulations as would, whilst separating those which are exceptionable, protect and encourage institutions of sterling utility, he would justly merit the thanks of individuals associating for laudable objects, and the gratitude of the country at large for the benefits derived from such establishments.

THE END.

W. People, Printer,
22, Old Boswell Court, Strand.



UNIVERSITY OF ILLINOIS-URBANA
3 0112 062406704